

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

OAH No. 2020090605

DECISION

Administrative Law Judge Sean Gavin, Office of Administrative Hearings, State of California, heard this matter telephonically on December 2, 2020.

Robin Black, Legal Services Manager, represented Alta California Regional Center (ACRC).

Claimant's mother, as well as authorized representative Brittnee Gillespie Malone, both represented claimant.

Evidence was received, the record closed, and the matter submitted for written decision on December 2, 2020.

ISSUE

Is ACRC required to continue funding in-home respite services for claimant at the rate of 180 hours per quarter?

FACTUAL FINDINGS

Background

1. Claimant is a seven-year-old boy. On May 9, 2016, ACRC determined he qualifies for regional center services based on his diagnosis of Autism, which causes substantial disability in his self-care, receptive and expressive language, and self-direction. Lorie Bennett is his assigned Service Coordinator.

2. Claimant lives at home with his parents and two siblings. He enjoys reading, playing on his tablet, Minecraft, dancing, and watching the weather channel. He started second grade at River Oaks Elementary School in the Galt Joint Union Elementary School District during the 2020/2021 school year. His mother subsequently enrolled him in the GLEE Home Learning Academy and his school of attendance is now Valley Oaks Elementary School.

ACRC's Service and Support Policy for Respite Services

3. ACRC's Procedures Manual describes respite services as "intermittent or regularly scheduled *temporary* non-medical care and supervision necessary to provide parents with relief from the stress of caring for a family member with a care need that exceeds the normal care for a child or adult of the same age" (emphasis in

original). Services are generally provided in the family home or a licensed facility, and they are intended to:

Relieve family members from the constant demands and responsibility of caring for the consumer.

Assist the family members in supporting the consumer at home.

Provide appropriate care and supervision to ensure the consumer's safety in the absence of family members.

Attend to the consumer's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by family members.

4. ACRC's Procedures Manual provides guidelines to determine when a consumer qualifies for services. The guidelines specify that all generic and natural resources must be exhausted before ACRC will fund respite, only the least costly service that meets the consumer's needs will be funded, and "there must be the presence of a care need that exceeds that required for typically developing peers." The number of hours of services purchased "cannot exceed 120 per quarter," unless ACRC grants an exception.

5. Regarding exceptions, the Procedures Manual states:

An exception may be approved by staffing the request at the Family Services and Supports Committee (FSSC) if it is demonstrated that the client's care and supervision needs

are such that additional respite is necessary to maintain the client in the home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the client. The exception is time limited.

An "extraordinary event" includes the death, serious illness, incapacitation, or long-term absence of a caregiver or family member, the client's behavioral or medical emergency, or a natural disaster or epidemic.

August 15, 2019 IPP Meeting

6. On August 15, 2019, ACRC held an Individual Program Plan (IPP) meeting regarding claimant. The planning team consisted of claimant, his mother, and Ms. Bennett. Based on information provided during the meeting and the guidelines provided in ACRC's Procedures Manual, the parties determined claimant qualified for 120 hours of in-home respite services per quarter. The IPP documented the service to be provided as follows: "ACRC [Service Coordinator] will request ACRC funding for up to a maximum of 120 hours/quarter of respite and mileage through UCP Family Respite in accordance with ACRC Service and Support Policy."

March 26, 2020 Addendum to IPP

7. On March 26, 2020, claimant's mother and Ms. Bennett signed an addendum to claimant's IPP. Pursuant to the addendum, effective April 1, 2020, ACRC increased claimant's respite care to 180 hours per quarter. The Addendum identifies the "change in current status" as follows: "[t]emporary increase in Respite hours to 180

hours per quarter plus mileage for (agency respite) is authorized during this State of Emergency while school and day programs are closed.” It further states:

Service and supports will be changed as follows:

Due to the increase [sic] demands of care for [claimant] and pursuant to Governor Gavin Newsom’s Proclamation of a State of Emergency, ACRC will implement a one-time increase of Respite hours to 180 hours per quarter. Respite hours will return to 120 hours per quarter as indicated in current IPP dated 8/15/19, once school resumes.

August 21, 2020 IPP Meeting

8. On August 21, 2020, ACRC held an IPP meeting regarding claimant. The planning team consisted of claimant’s mother and Ms. Bennett. Based on information provided during the meeting and the guidelines provided in ACRC’s Procedures Manual, ACRC determined claimant qualified for 120 hours of in-home respite services per quarter and proposed reducing his hours to that amount, effective October 1, 2020. The IPP stated:

On March 13, 2020, the State of California was placed on a Stay at Home Order and schools were closed down. Due to the increase [sic] demands of care for [claimant] while at home and pursuant to Governor Gavin Newsom's Proclamation of a State of Emergency, ACRC granted a temporary increase in respite hours to clients. This increase was to provide you with an additional break from your increased care duties because all of your children were

abruptly required to participate in distance learning from home because of COVID 19. At the time of the request, based on previous information from the mother, [claimant's] father was not living in the home.

[Claimant] received a temporary increase of respite hours from the 120 hours a quarter to 180 hours a quarter, effective April 1, 2020. The parent signed an addendum to the IPP agreeing to the temporary increase and that the hours would be decreased once the client is back to school. Effective October 1, 2020 [claimant's] temporary increase of 180 hours a quarter of respite is scheduled [to] return to the regularly assessed hours of 120 hours a quarter.

9. Claimant's mother disagreed with the proposed decrease in hours and sent an email to Ms. Bennett stating her reasons. On September 10, 2020, Ms. Bennett updated the IPP to include claimant's mother's response, stating "[a]t this time, the parent does not agree with the decrease in hours that she previously agreed too [*sic*]. She has requested that the following information stated in an email to this SC dated 9/9/20 be included in this IPP." Ms. Bennett included claimant's mother's email:

I agree with the IPP (after edits) except for the reduction in Respite hours. Although, I understand the RC planned on this being a short-term help to families our family is still in need of the support for the following reasons:

- Live in a 3 bedroom home.
- All 3 Children have a disability (2 RC clients).

- All children are on Distance Learning for the remainder of the year.
- Dad is unemployed due to lack of child care/support for older sister.
- Dad is supporting [claimant's] Sisters during Distance Learning (intermittently) and is not able to support [claimant].
- Dad attending/enrolled in Adult Education.
- Parents attending counseling services virtual sessions.
- Mom works from home.
- Mom still facing medical issues.
- [Claimant's] Sister is dealing with a lot of behaviors / needs to be cared for separately and in different areas of our small house.
- [Claimant's] sister is high risk to COVID.
- [Claimant's] 16-year-old sister is in college recruiting process and requires parents to attend zoom calls and discussion with colleges.
- Shelter in Place orders require more time for basic tasks like groceries, med appointments and shopping.

- The remote services require us as parents to get more training and give more training in order to support [claimant] at home.

For all of these reasons I ask that we be allowed to keep this amount of hours to support us.

10. Ms. Bennett considered claimant's mother's reasons but decided they did not justify an ongoing increase in respite hours. On September 10, 2020, she wrote in the IPP, "[b]ased on the information provided by the parent, there is not a demonstrated need for an increase in respite hours above the 120 hours of in home respite and N[otice] O[f] A[ction] will be issued to the parent stating the reasons for the denied increase."

Notice of Proposed Action

11. On September 11, 2020, Ms. Bennett prepared a Notice of Proposed Action giving claimant notice of ACRC's intent to reduce the number of respite hours from 180 to 120 per quarter. The Notice informed claimant of his right to appeal ACRC's decision by requesting a fair hearing.

12. On September 17, 2020, claimant's mother signed a Fair Hearing Request appealing ACRC's decision to reduce her son's respite hours. This hearing followed.

Evidence at Hearing

TESTIMONY OF LORIE BENNETT

13. Ms. Bennett explained that claimant's respite hours were increased to help his mother with the additional responsibility of caring for claimant and his

siblings while they were engaged in distance learning from home. ACRC recognized that, due to school closures in March 2020 following the COVID-19 epidemic, claimant's mother "was required to care for [claimant] longer hours than if he was in school."

14. Ms. Bennett also explained that respite hours are meant to give parents "an occasional break from the care they give their child." She reviewed the timesheets from claimant's respite care provider, UCP of Sacramento and Northern California (UCP) and noticed that, after April 1, 2020, UCP provided respite care during claimant's typical school hours. In particular, she noticed that beginning in August 2020, UCP provided care from 8:00 a.m. until 1:00 p.m. approximately three days per week. From this, Ms. Bennett concluded claimant's mother was using respite care to help claimant with his distance learning, which she believes is beyond the intended scope of respite hours. Instead, she believes claimant's school district should provide him in-person support during distance learning. Alternatively, she believes claimant may qualify for In-Home Supportive Service (IHSS) or daycare services through ACRC.

15. When ACRC initially approved the temporary increase in claimant's respite hours, it was based on the belief that schools would resume in-person instruction for the 2020/2021 school year. In addition, in March 2020, ACRC believed claimant's mother would have sufficient time before the start of the 2020/2021 school year to "figure out" how to manage childcare.

TESTIMONY OF BRANDY CHILDRESS

16. Brandy Childress is a client services manager at ACRC. In that role, she supervises Ms. Bennett. At hearing, she testified that ACRC caps respite hours at 120 per quarter, but that the COVID-19 epidemic was an "extraordinary event" that

qualified claimant for a temporary exception to the cap. She also explained that school closures following the COVID-19 epidemic were only part of the reason for claimant's increase in respite hours. In addition, ACRC considered that claimant's father did not live with the family, that claimant did not have IHSS services, and that the school district was not providing distance learning support.

17. Ms. Childress explained that claimant no longer qualifies for increased respite hours because his father has since moved back into the home, claimant's family has not applied for IHSS services, and the school district is providing distance learning support for the 2020/2021 school year. Specifically, the school district plans to introduce a computer program called "Lightspeed" that will help claimant stay on task without in-person adult supervision. Ms. Childress does not know how Lightspeed works or how effective it will be for claimant.

18. Ms. Childress also explained that ACRC's Procedures Manual provides that an increase to respite hours is "time limited." She was not aware of any ACRC policies or procedures that define or govern the length of such time limitation.

TESTIMONY OF CLAIMANT'S MOTHER

19. Claimant's mother lives with claimant, her 16-year-old daughter, and her 19-year-old daughter. Her oldest daughter is also an ACRC client. Her husband recently moved back into the family home.

20. Prior to the COVID-19 pandemic, claimant's mother used respite hours to take intermittent breaks throughout the day when claimant was home from school. Since April 2020, she has used the respite hours during claimant's school day because claimant is distractible and needs one-on-one attention to stay engaged at school. On

days that claimant does not use respite hours, his mother, father, and youngest sister “pitch in” to help, but claimant does not complete the full day of school.

21. Claimant’s mother works full-time from the home, her 16-year-old daughter has her own schoolwork, her 19-year-old daughter is “severely disabled and unable to help,” and claimant’s father works 5:00 p.m. to 1:30 a.m. in addition to taking college classes. Claimant’s mother believes the increased respite hours help achieve ACRC’s stated objectives, including relieving the family from the constant demands and responsibility of caring for claimant, assisting the family members in supporting claimant at home, providing appropriate care and supervision to ensure claimant’s safety, and attending to claimant’s basic self-help needs and other activities of daily living. Specifically, in addition to helping claimant complete his schoolwork, the respite care provider keeps claimant safe, prevents him from leaving the home, and ensures he does not eat unsafe things such as undercooked food.

22. Claimant’s school district has not yet resumed in-person instruction. The district does not provide in-person support, and claimant’s mother does not believe the Lightspeed program will keep claimant engaged in school and safe in the home during the hours he would normally be on campus. She has not applied for IHSS for claimant because she does not believe he will qualify due to his age and due to difficulty getting IHSS approved for her oldest daughter.

Analysis

23. On August 15, 2019, claimant’s IPP planning team met and determined he qualifies for 120 hours of in-home respite services per quarter. After claimant’s mother was faced with the additional demands of caring for him while engaged in distance learning when he would normally be at school, ACRC temporarily increased

claimant's respite hours to 180 per quarter on the condition that the number of hours would revert to the number authorized in the IPP "once school resumes."

24. School has not yet resumed. Despite Ms. Childress's testimony that, when ACRC approved the increase in respite hours it considered that claimant's father did not live with the family, that claimant did not have IHSS services, and that the school district was not providing distance learning support, the March 26, 2020 IPP Addendum did not reflect those considerations. Rather, it stated that the temporary increase was authorized "while school and day programs are closed."

25. Ms. Bennett explained that using respite care to help claimant with his distance learning is beyond the intended scope of respite hours. This is inconsistent with the language of the March 26, 2020 IPP Addendum, which identified school closures as the sole reason for the increased respite hours.

26. In addition, ACRC's Procedures Manual does not forbid claimant's parents from using his respite hours to help him complete his schoolwork. To the contrary, according to the Procedures Manual, respite services are designed, in part, to help "[a]ttend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines within the home which would ordinarily be performed by the family members." Attending school is part of claimant's daily routine and he cannot do so during distance learning without help. His family is unable to help him. When the respite care provider is not present, claimant does not complete the full school day.

27. The evidence at hearing established that the stated reason for claimant's increased respite hours, school closures, still exists. ACRC did not establish that other considerations, such as whether claimant's father lives in the home or whether

claimant received IHSS or school district support, justify reducing his respite hours while his school remains closed and he remains on distance learning. Consequently, ACRC shall continue funding in-home respite services for claimant at the rate of 180 hours per quarter until such time that in-person school instruction resumes.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. ACRC has the burden to prove it is no longer required to fund in-home respite services for claimant at the rate of 180 hours per quarter. (*In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388 [the law has “a built-in bias in favor of the status quo,” and the party seeking to change the status quo has the burden “to present evidence sufficient to overcome the state of affairs that would exist if the court did nothing”].) The applicable standard of proof is preponderance of the evidence. (Evid. Code, § 115 [the standard of proof is preponderance of the evidence, unless otherwise provided by law].) This evidentiary standard requires ACRC to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, ACRC must prove it is more likely than not that it is no longer required to fund 180 hours of respite per quarter for claimant. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

2. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of the “treatment and habilitation services and supports” to enable

such persons to live “in the least restrictive environment.” (Welf. & Inst. Code, § 4502, subd. (b)(1).) “The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community [citations], and to enable them to approximate a pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community [citations].” (*Assoc. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. The Legislature has further declared regional centers are to provide or secure family supports that: respect and support the decision-making authority of the family; are flexible and creative in meeting the unique and individual needs of the families as they evolve over time; build on family strengths, natural supports, and existing community resources; are designed to meet the cultural preferences, values, and lifestyles of the family; and, focus on the entire family and promote the inclusion of children with disabilities in all aspects of school and community. (Welf. & Inst. Code, § 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner and must be individually tailored to the consumer. (Welf. & Inst. Code, §§ 4685, subd. (c)(3) & 4648, subd. (a)(2)).

4. To determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a lifestyle as possible. (Welf. & Inst. Code, § 4646; *Assoc. for Retarded Citizens v. Dept. of Developmental Services*, *supra*, 38 Cal.3d at p. 389.) The IPP is developed by an interdisciplinary team and must include participation by the consumer and/or her representative. Among other things, the IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be based upon the consumer’s developmental needs), contain a

statement of time-limited objectives for improving the consumer's situation, and reflect the consumer's particular desires and preferences. (Welf. & Inst. Code, §§ 4646, subd. (a)(1), (2), & (4); 4646.5, subd. (a); 4512, subd. (b); & 4648, subd. (a)(6)(E).) The regional center must then "secure services and supports that meet the needs of the consumer" within the context of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

5. Regional centers are mandated to provide a wide range of services to facilitate implementation of a consumer's IPP but must do so in a cost-effective manner. (Welf. & Inst. Code, §§ 4640.7, subd. (b), & 4646, subd. (a).) They must "identify and pursue all possible sources of funding for consumers receiving regional center services." (Welf. & Inst. Code, § 4659, subd. (a).) Regional centers are not required to provide all the services a consumer may require but are required to "find innovative and economical methods of achieving the objectives" of the IPP. (Welf. & Inst. Code, § 4651.)

6. Regional centers are required to adopt internal policies regarding the purchase of services for consumers. (Welf. & Inst. Code, § 4646.4, subd. (a)(1).) The Department of Developmental Services is required to review those policies prior to implementation by the service centers, and "shall take appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of" the Lanterman Act or any regulation adopted pursuant to it. (Welf. & Inst. Code, § 4434, subd. (d).) A regional center may not deny a request for services based upon the application of an inflexible policy denying such services. Whether a consumer is entitled to a particular service depends upon consideration of all relevant circumstances. (*Williams v. Macomber* (1990) 226 Cal.App.3d 225, 231-234.)

Conclusion

7. ACRC did not meet its burden to prove it is not required to continue funding claimant's in-home respite services at the rate of 180 hours per quarter. The stated reason for ACRC funding additional hours – claimant's family's additional responsibilities while claimant participated in distance learning – still exists. Under the express terms of the March 26, 2020 IPP Addendum, the number of respite hours ACRC is required to fund reverts to 120 per quarter "once school resumes." There was no evidence to justify terminating the exception to the maximum number of hours of respite authorized by ACRC's Procedures Manual until that condition occurs.

ORDER

Claimant's appeal from Alta California Regional Center's September 11, 2020 Notice of Proposed Action proposing to reduce the number of hours of in-home respite services funded from 180 per quarter to 120 per quarter is GRANTED. ACRC shall continue funding in-home respite services for claimant at the rate of 180 hours per quarter until such time that claimant's school resumes in-person instruction.

DATE: December 16, 2020

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days. (Welf. & Inst. Code, § 4712.5, subd. (a).)